

Exhibit 7	Return of Service for Mark Cangelose <i>Dated: July 20, 2017</i>	ACIC App. 025
Exhibit 8	Texas Department of Insurance Letter to Clerk regarding Refusal of Service of Atlantic Casualty Insurance Company <i>Dated: July 24, 2017</i>	ACIC App. 026
Exhibit 9	Return of Service for Service Insurance Group, Inc. <i>Dated: July 26, 2017</i>	ACIC App. 027
Exhibit 10	Return of Service for Litchfield Special Risks, Inc. <i>Dated: July 31, 2017</i>	ACIC App. 028
Exhibit 11	Litchfield Special Risks, Inc.'s Original Answer <i>Dated: August 2, 2017</i>	ACIC App. 029-033
Exhibit 12	2 nd Citation Issued to Atlantic Casualty Insurance Company <i>Dated: August 9, 2017</i>	ACIC App. 034
Exhibit 13	Litchfield Special Risks, Inc.'s Amended Answer <i>Dated: August 9, 2017</i>	ACIC App. 035-038
Exhibit 14	Service Insurance Group, Inc.'s Answer and Plea to the Jurisdiction of Plaintiff's Original Petition <i>Dated: August 14, 2017</i>	ACIC App. 039-042
Exhibit 15	Mark Cangelose's Original Answer <i>Dated: August 14, 2017</i>	ACIC App. 043-044
Exhibit 16	Atlantic Casualty Insurance Company's Original Answer <i>Dated: September 11, 2017</i>	ACIC App. 045-052
Exhibit 17	Mark Cangelose's First Amended Answer and Affirmative Defenses <i>Dated: September 19, 2017</i>	ACIC App. 053-058
Exhibit 18	Service Insurance Group, Inc.'s Amended Answer, Plea to the Jurisdiction and Affirmative Defenses <i>Dated: September 20, 2017</i>	ACIC App. 059-064
Exhibit 19	Plaintiff's First Amended Petition <i>Dated: September 20, 2017</i>	ACIC App. 065-078

Exhibit 20	Issuance of Process Instructions for SIG Insurance Services, LLC <i>Dated: September 20, 2017</i>	ACIC App. 079
Exhibit 21	List of Counsel and Parties Represented	ACIC App. 080-081

Respectfully submitted,

SAVRICK, SCHUMANN, JOHNSON,
MCGARR, KAMINSKI & SHIRLEY, L.L.P.

By: 

Camille Johnson
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Southern District Bar No. 16414
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**ATTORNEY FOR DEFENDANT, ATLANTIC
CASUALTY INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notification to all counsel of record.

Scott J. Scherr
Jason D. Reynal
PAYNE, MALECHEK, SCHERR, CAMPBELL & MOORE, P.C.
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Counsel for Service Insurance Group, Inc.


Camille Johnson

17-001725-CV-272

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Marvin Klintworth d/b/a Brazos Site Work vs. Atlantic Casualty Insurance Company, Mark Cangelose Service Insurance Group, Inc. and Litchfield Special Risks, Inc.

Type: Civil Case - Other

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Action

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Date	OCR	Type	Name	Pgs	Misc
09/20/2017		PDF Documents	First Amended Answer	6	X
09/19/2017		PDF Documents	First Amended Answer and Alternative Defenses	6	
09/11/2017		PDF Documents	Original Answer/Atlantic Casualty	8	X
08/14/2017		PDF Documents	Original Answer/Mark Cangelose	2	
08/14/2017		PDF Documents	Defendant Service Insurance Group, Inc.'s Original Answer	4	
08/09/2017		Criminal Document	Citation Served	1	X
08/09/2017		PDF Documents	Defendant Litchfield Special Risks Inc.'s Amended Answer to Plaintiff's Third Amended Petition	4	
08/08/2017		PDF Documents	Issuance of Process	2	X
08/04/2017		PDF Documents	Letter for the File/Refusal Letter	1	X
08/02/2017		PDF Documents	Defendant's Original Answer to Plaintiff's Original Petition	5	
07/31/2017		<input checked="" type="checkbox"/> Civil Document	Citation Served Atlantic Casualty Insurance	1	X
07/31/2017		<input checked="" type="checkbox"/> Civil Document	Citation Served Litchfield Special Risks	1	X
07/26/2017		<input checked="" type="checkbox"/> Civil Document	Citation Served Service Insurance Group	1	X
07/26/2017		<input checked="" type="checkbox"/> Civil Document	Citation Served Mark Cangelose	1	X
07/14/2017		<input checked="" type="checkbox"/> Civil Document	Citation Issued	2	X
07/14/2017		<input checked="" type="checkbox"/> Civil Document	Citation Issued	2	
07/14/2017		<input checked="" type="checkbox"/> Civil Document	Citation Issued	2	X
07/14/2017		<input checked="" type="checkbox"/> Civil Document	Citation Issued	3	X
06/30/2017		PDF Documents	Issuance of Process Instructions/ Litchfield	1	X
06/30/2017		PDF Documents	Issuance of Process Instructions/ Atlantic Casualty	1	X
06/30/2017		PDF Documents	Issuance of Process Instructions/ Mark Cangelose	1	X
06/30/2017		PDF Documents	Issuance of Process Instructions/ SRS, Inc.	1	
06/30/2017		PDF Documents	Civil Case Information Sheet	2	
06/30/2017		PDF Documents	Plaintiff's Original Petition	14	

Received & Filed 8/30/2017 2:48 PM
 Marc Hamlin, District Clerk
 Brazos County, Texas
 Jeri Alexander
 Envelope# - 17952007

CAUSE NO. 17-001725-CV-²⁷²CEL

MARVIN KLINTWORTH D/B/A BRAZOS SITE WORK	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	BRAZOS COUNTY, TEXAS
	§	
ATLANTIC CASUALTY INSURANCE COMPANY, MARK CANGELOSE SERVICE INSURANCE GROUP, INC. AND LITCHFIELD SPECIAL RISKS, INC.	§	
	§	
	§	<u>272</u> JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Marvin Klintworth d/b/a Brazos Site Work ("Brazos Site Work") files this Original Petition against Atlantic Casualty Insurance Company, Mark Cangelose, Service Insurance Group, Inc., and Litchfield Special Risks, Inc.

I.
DISCOVERY CONTROL PLAN LEVEL

Brazos Site Work intends that discovery be conducted under Discovery Level 3.

II.
PARTIES AND SERVICE

Plaintiff Marvin Klintworth d/b/a Brazos Site Work is an individual residing in Brazos County, Texas.

Defendant Atlantic Casualty Insurance Company is a surplus lines foreign insurance company with its principal place of business in North Carolina. Although Atlantic Casualty Insurance Company does not maintain an office in Texas, Atlantic Casualty Insurance Company engages in business in Texas, has provided insurance products in the State of Texas, and has purposefully availed itself to, and has sufficient contacts with, Texas to be subjected to personal jurisdiction in Texas. The claims presented herein arise directly from Atlantic Casualty Insurance

Company's contacts with the State of Texas. Pursuant to Tex. Ins. Code 804.001, et seq. and the policies at issue, Atlantic Casualty Insurance Company may be served with process by serving the Commissioner of Insurance in Texas, at Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The Commissioner of Insurance must then send by registered or certified mail, return receipt requested, one copy of the process served on the Commissioner to Atlantic Casualty Insurance Company at PO Drawer 8010, Goldsboro, North Carolina 27533-8010.

Defendant Mark Cangelose is an individual residing in Texas. He may be served with process at his regular place of business 2751 Nash Street, Suite 100, Bryan, Texas 77802.

Defendant Service Insurance Group, Inc. is a domestic corporation with its principal place of business in Brazos County, Texas. It may be served with process through its registered agent, Rodney Hurt, 3840 Corporate Center Drive, Bryan, Texas 77802.

Defendant Litchfield Special Risks, Inc. is a domestic corporation with its principal place of business in Texas. It may be served with process through its Registered Agent, Robert L. Maes at 7016 Orizaba, El Paso, Texas 79912 or wherever he may be found.

III. **JURISDICTION AND VENUE**

The subject matter in controversy is within the jurisdictional limits of this court.

This court has jurisdiction over the parties because Defendants are residents of Texas and/or are licensed to do business in Texas and/or engaged in sufficient contact and transactions in Texas and/or participated in the stream of commerce with the expectation that it would affect commerce in Texas, and Defendants are thus subject to jurisdiction by Texas courts.

In accordance with Texas Rule of Civil Procedure 47, Plaintiff states that he is seeking non-monetary relief and monetary relief of more than \$100,000 but less than \$200,000. In the alternative, Plaintiff states that he is seeking monetary relief of more than \$200,000 but less than

\$1,000,000. In the alternative, Plaintiff states that he is seeking monetary relief of more than \$1,000,000.

Venue in Brazos County is proper in this cause under Section 15.002, et. seq. of the Texas Civil Practice and Remedies Code because the discussions precipitating the purchase, and the actual purchase of, the insurance policies made the basis of this suit occurred in Brazos County, Texas, and at least two of the Defendants reside and/or maintain a principal office in Brazos County, Texas, and the place of the occurrences and contacts all occurred in Brazos County, Texas.

IV. **FACTS**

In or about December 2003, Brazos Site Work contacted Mark Cangelose, an insurance agent with Service Insurance Group, Inc, to obtain a liability insurance policy for its business operations. At the time, Brazos Site Work was a sole proprietorship owned by Marvin Klintworth, who was doing business under the assumed name of Brazos Site Work, as evidenced by the Assumed Name Certificate on file with the Brazos County Clerk at the time. A copy of the Assumed Name Certificate is attached hereto as Exhibit "A." Although the business was Marvin's, he shared the workload with his brother, Brian, with Marvin doing more of the "out in the field" work and his brother Brian handling the office and paperwork end of the business.

Brazos Site Work provides construction sitework services, namely the part of a construction project that includes grading, excavation, driveways and foundation work. Thus, the construction services provided by Brazos Site Work specifically involve work with, on and involving the surface and levelness of the land. Knowing exactly what kind of work Brazos Site Work does and the business it is involved with, Mr. Cangelose submitted Commercial Insurance Applications on Plaintiff's behalf to Litchfield Special Risks, Inc., the broker used by Mr. Cangelose and Service Insurance Group, Inc. to obtain policies. Litchfield Special Risks, Inc.

obtained quotes from Atlantic Casualty Insurance Company on Plaintiff's behalf. At Mr. Cangelose's recommendation, Brazos Site Work purchased a policy from Defendant Atlantic Casualty Insurance Company. The policy number was L096000316 with a policy period of December 31, 2003 through December 31, 2004. A second policy through Atlantic Casualty Insurance Company, numbered L096000583, covered the period of January 25, 2005 through January 25, 2006. The terms of these policies provided for coverage of certain claims made against the insured and obligated Atlantic Casualty Insurance Company to provide a defense for claims made against the insured.

During the policy periods, Chappell Hill Construction Company ("Chappell Hill") subcontracted with Brazos Site Work to perform work for a construction project in Red Rock, Texas ("the Project"). The Project was owned by Bluebonnet Electric Cooperative, Inc. ("Bluebonnet").

In completing his initial bid, Brazos Site Work reviewed the plans and specifications to provide a bid to use 4-feet of select fill under the building pad. Brazos Site Work began and then completed work on the Project during the applicable policy period. A Certificate of Substantial Completion was later issued for the Project on October 19, 2005, well within the applicable policy period. In doing work on the Project, Brazos Site Work used 4-feet of select fill, as it thought was appropriate by reading of the plans and specifications provided.

After completion of the work, Bluebonnet filed suit in Bastrop County against Chappell Hill and other parties in a case styled Cause Number 423-4305; *Bluebonnet Electric Cooperative, Inc. v. Chappell Hill Construction Co., et al*; in the 423rd Judicial District Court of Bastrop County, Texas. Bluebonnet alleged certain construction and design defects in this lawsuit which was filed in 2016. Bluebonnet alleged that the Red Rock facility had been damaged due to upward movement of the soil-supported slab and attributes that movement to the

fact that only 4-feet of select fill was used instead of 6-feet. It was not until July 1, 2016 that Bluebonnet made Marvin Klintworth d/b/a Brazos Site Work a party to the suit, alleging that Brazos Site Work was negligent in reading and interpreting the plans and specifications. Bluebonnet contends that Brazos Site Work should have read the plans and specifications to require 6 feet of select fill for the slab on grade, instead of the 4 feet that Brazos Site Work thought was required.

Brazos Site Work complied with its contract and provided the amount of fill it bid, but Bluebonnet contends Brazos Site Work was negligent because it read the plans and specifications incorrectly. That lawsuit is not a breach of contract case against Brazos Site Work -- it is a negligence case. In fact, Brazos Site Work did not even have a contract with Bluebonnet and therefore Bluebonnet cannot even assert a breach of contract case against Brazos Site Work.

Bluebonnet claims to have approximately \$2 million in damages. Bluebonnet asserts that because the dirt work performed by Brazos Site Work was buried beneath the building, it was impossible to see the damages at that time. Bluebonnet further claims it did not discover the source of the issues until 2014. Although Brazos Site Work disputes Bluebonnet's claims, Bluebonnet made a claim which is, or should be, covered by the policies issued by Defendant. Accordingly, Brazos Site Work notified Defendant of the lawsuit by Bluebonnet and demanded that Defendant provide coverage and a defense as required by the policies. This notice was provided immediately after Brazos Site Work located the policy information.

Atlantic Casualty Insurance Company was made aware of the claim and given a copy of Bluebonnet's live-pleading. Brandi K. Percy, a Litigation Examiner with the insurance company was assigned to the claim. Acting on no more than the petition itself and a very short single phone conversation with counsel on March 21, 2017, the insurance company agent issued a ten-

page letter, on behalf of Atlantic Casualty Insurance Company on March 31, 2017, denying coverage of the claims made by Bluebonnet and refusing to provide Brazos Site Work a defense.

In refusing to provide coverage, or even provide a defense for Brazos Site Work, Atlantic Casualty Insurance Company claims that the insurance policy is not applicable to the named Defendant in the Bluebonnet suit, "Marvin Klintworth dba Brazos Site Work." However, Brazos Site Work's policies with Atlantic Casualty Insurance Company names the insured as follows:

**BRIAN KLINTWORTH
DBA BRAZOS SITE WORK
9349 DILLY SHAW TAP RD
BRYAN TX 77808**

An Assumed Name Certificate, under Chapter 36, Title 4 of the Texas Business and Commerce Code was filed in February 2004 indicating that Brazos Site Work was the assumed name under which Marvin Klintworth was conducting business. At the time the insurance was obtained, the only person doing business as "Brazos Site Work" was Marvin Klintworth. The policies do provide coverage to "Brazos Site Work," and therefore, Brazos Site Work – the named defendant in the Bluebonnet lawsuit – is a named insured for which coverage should apply. Furthermore, during the single phone conversation between Defendant's agent and counsel for Klintworth, it was explained that Marvin and Brian are brothers and had worked at Brazos Site Work together since its inception, and that Brian mainly handled the paperwork while Marvin was generally out in the field.

Brazos Site Work had a d/b/a certificate on file at the time the insurance was obtained. Such certificate put everyone on notice as to who was doing business as Brazos Site Work. The subcontract between Brazos Site Work and Chappell Hill lists "Brazos Site Work" as the subcontractor, and Brazos Site Work is the named insured on the face of the policies at issue.

Any discrepancy about who was being insured was caused by the Defendants, who were on notice by Klintworth and by the d/b/a certificate, as to who Brazos Site Work really was.

Atlantic Casualty Insurance Company further denied coverage on the basis that the alleged damages occurred outside of the policy periods, without even conducting any investigation as to when the alleged damages actually occurred or began to occur. Even the Plaintiff in the Bluebonnet suit says they could not see the damage because it was under the building, so Atlantic Casualty cannot possibly know when the alleged damages occurred, much less that they occurred outside the policy period.

The policies at issue are “occurrence-based” and state that the insurance provides coverage when “[t]he “bodily injury” or “property damage” occurs during the policy period...” As explained to Atlantic Casualty’s agent, Bluebonnet’s lawsuit alleges that it seeks damages for Brazos Site Work’s alleged negligence in failing to construct the Project’s building pad in accordance with plans and specifications, and the only time in which Brazos Site Work performed work on the Project was during the policy periods. Bluebonnet alleges that its damages resulted from this failure. The “occurrence” and damages for which Bluebonnet sues Brazos Site Work occurred during the policy period, even if the damages were not discovered until much later.

Atlantic Casualty Insurance Company further listed a series of policy provisions, without any explanation for how these provisions applied to Brazos Site Work’s request for coverage and how they supported Atlantic Casualty Insurance Company’s decision to decline coverage. Curiously, one provision cited in Ms. Percy’s letter does not even appear in either insurance policy she provided to the insured’s counsel. That provision reads as follows:

EXCLUSION – SUBSIDENCE

In consideration of the premium charged, it is hereby understood and agreed that liability for bodily injury or property damage caused by,

resulting from, attributable to or contributed to, or aggravated by the subsidence of land as a result of landslide, mud flow, earth sinking or shifting, resulting from operations of the Named Insured or any other subcontractor of the Named Insured is excluded.

AGL-011 1/03

If the "Subsidence" exclusion is considered to be part of Plaintiff's insurance policies, it stands to reason that Plaintiff was sold a virtually useless policy. By virtue of Plaintiff's business alone—Brazos *Site Work*—it is clear that the nature of Plaintiff's work is dirt work for new construction. Movement of foundations and subsidence, is a very common, known issue in the state of Texas. And Brazos Site Work's work is directly involved in the leveling and minimization of earth movement. Coverage for subsidence is something that Brazos Site Work would clearly have expected and needed in a liability policy. If the "Subsidence" exclusion is considered to be part of Brazos Site Work's insurance policies, then Defendants Service Insurance Group, Inc., Mark Cangelose, and Litchfield Special Risks, Inc. were negligent in selling the wrong policies to Plaintiff. Furthermore, Defendant Atlantic Casualty Insurance Company has misinterpreted its own policy provisions because the "Subsidence" exclusion is not applicable to the facts of this case.

If the "Subsidence" exclusion is not part of the Plaintiff's insurance policies, then Defendant Atlantic Casualty Insurance Company has boldly misrepresented the policies to Brazos Site Work by claiming certain non-existent language has a bearing on its decision to deny coverage.

The duty to defend is a separate duty owed by the insurance company and even if Brazos Site Work is not liable to Bluebonnet for its alleged "negligence" in reading the plans and specifications, Atlantic Casualty Insurance Company still owed Brazos Site Work a duty to defend such ridiculous claims. Defendant Atlantic Casualty Insurance Company has wrongfully denied to even investigate or defend Brazos Site Work. Its actions towards Brazos Site Work

reflect a complete lack of good faith in investigation of Bluebonnet's allegations prior to declining to even provide Brazos Site Work with a defense in the Bastrop County lawsuit. Brazos Site Work seeks a determination by this Court that Atlantic Casualty Insurance Company is contractually obligated to provide a defense and coverage to Brazos Site Work for the claims asserted by Bluebonnet. As it stands now, Brazos Site Work is having to pay for its own defense, is potentially liable for \$2 million in damages, and the insurance procured for the express purpose of providing coverage for this construction project, appears to be a farce. Even if Brazos Site Work were to prevail in the Bastrop County action, it has expended, and will continue to expend, significant amounts of attorney's fees in defending the action—fees that should have been covered by Atlantic Casualty Insurance Company under its obligation to provide a defense to Brazos Site Work.

V. DECLARATORY JUDGMENT

Pursuant to §37.006 of the Texas Practice & Remedies Code, the other persons or entities that would be affected by the declarations sought herein include Marvin Klintworth d/b/a Brazos Site Work and Defendant Atlantic Casualty Insurance Company and Mark Cangelose and Service Insurance Group, Inc. Brazos Site Work requests that the Court interpret the rights and obligations of the parties with regard to the Atlantic Casualty Insurance Company Policies, Numbered L096000316 and L096000583, and determine the following:

- That the claims made by Bluebonnet Electric Cooperative, Inc. are claims covered under the insurance policies issued by Atlantic Casualty Insurance Company and made the basis of this suit; and
- That Atlantic Casualty Insurance Company must provide a defense for Brazos Site Work with regard to the claims made by Bluebonnet Electric Cooperative, Inc.

**VI.
BREACH OF CONTRACT**

Defendant Atlantic Casualty Insurance Company promised to provide a defense to Brazos Site Work should a suit arise against Brazos Site Work for damages covered by the policies. Brazos Site Work paid premiums in compliance with the policies. However, upon being notified of the lawsuit filed by Bluebonnet, Defendant Atlantic Casualty Insurance Company refused to provide a defense. This refusal constitutes a breach of contract, and Brazos Site Work has suffered injuries and damages as result of that breach.

**VII.
NEGLIGENCE**

Pleading in the alternative, Defendants Mark Cangelose, Service Insurance Group, Inc., and Litchfield Special Risks, Inc.'s conduct constituted a breach of the duty of ordinary care owed by Mark Cangelose, Service Insurance Group, Inc., and Litchfield Special Risks, Inc. to Brazos Site Work, and Mark Cangelose, Service Insurance Group, Inc., and Litchfield Special Risks, Inc. were negligent by failing to properly identify the name of the insured in the applicable policies and, if the "Subsidence" exclusion is considered part of the applicable policies, Mark Cangelose, Service Insurance Group, Inc., and Litchfield Special Risks, Inc. were negligent by failing to offer Plaintiff a policy that did not include a "Subsidence" exclusion or by failing to fully and completely explain such coverage issues.

The above listed act and/or omission rises to the level of negligence and was a proximate cause of Brazos Site Work's damages made the basis of this lawsuit.

**VIII.
ATTORNEYS FEES**

As a result of the controversy between the parties, Brazos Site Work has been required to retain the undersigned legal counsel to institute and prosecute this action. Brazos Site Work is therefore entitled, pursuant to Section 37.009 and §38.001 of the Texas Civil Practice and

Remedies Code and Texas common law, to all reasonable and necessary attorney's fees and costs in prosecuting this action.

IX.
CONDITIONS PRECEDENT

All conditions precedent have been performed or have been waived as required by Rule 54 of the Texas Rules of Civil Procedure.

X.
REQUEST FOR DISCLOSURE

Brazos Site Work requests that within fifty (50) days of service, Defendants provide the information set forth in Rule 194.2 of the Texas Rules of Civil Procedure.

XI.
RULE 193.7 NOTICE

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Brazos Site Work serves notice that at any pretrial hearings or at the trial of this lawsuit, Brazos Site Work intends to use and rely upon each document produced by any party in written discovery, pretrial hearings, depositions, or in conjunction with the filing of any motions or pleadings in this lawsuit.

XII.
JURY DEMAND

Brazos Site Works respectfully demand a trial by jury on all issues of fact that may exist.

XIII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that on final trial hereof, declaratory judgment be granted as requested herein; that Plaintiff have and recover all costs and reasonable attorney's fees, and for such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

PAYNE, MALECHEK, SCHERR, CAMPBELL & MOORE, P.C.

By /s/ Scott J. Scherr

Scott J. Scherr

State Bar No. 17745412

Email: Scherr@thepayne-lawgroup.com

Jason D. Reynal

State Bar No. 24083725

Email: Reynal@thepayne-lawgroup.com

3850 Corporate Center Drive

Bryan, Texas 77802

979.776.9800

979.731.8333 (Fax)

ATTORNEYS FOR PLAINTIFF

Doc
06846558 OR Bk Vol Pg
5885 158STATE OF TEXAS
COUNTY OF BRAZOS

KNOW ALL MEN BY THESE PRESENTS:

PLEASE PRINT

THAT I, the undersigned, for the purpose of complying with Chapter 36, Title 4, Business and Commerce Code of the State of Texas, do hereby certify to the following facts:

1. Brazos Site Work is the assumed name under which the business or professional services is or is to be conducted or rendered
2. Registrant: Marvin Klintworth
3. Names and addresses

<u>Marvin Klintworth</u> - <u>9349 Dill Shaw Rd</u>	
Name	Address
<u>owner</u>	<u>Boyer TX 77808</u>
Title	City State Zip
Name	Address
Title	City State Zip
Name	Address
Title	City State Zip

Said Company was duly associated under the laws of TEXAS and its registered or similar office address is 9349 Dill Shaw Rd Boyer TX 77808
 County or counties within the State of Texas where the business or professional services are being or are to be conducted or rendered under said assumed name:

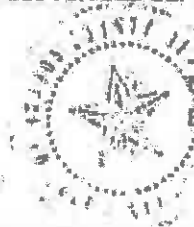
Brazos + surrounding Co.

4. The business service is a construction
5. The period, not to exceed ten (10) years, during which the assumed name will be used is from the 25 day of Feb, 2004 until the 25 day of Feb, 2014.

IN TESTIMONY WHEREOF, I have hereunto set my hand on, this the 25 day of Feb, 2004.

Marvin Klintworth

SWORN TO AND SUBSCRIBED BEFORE ME this 25 day of February, 2004.



Karen M. Owen - Co Clerk
 Notary Public State of Texas
 By: Debra Polansky - deputy

EXHIBIT "A"

Doc Bk Vol Pg
00046558 OR 5886 159

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____
20_____

Notary Public State of Texas

1. The name of your business
2. Indicate whether registrant is: an individual; a Partnership; an Estate; a Real Estate Investment Trust; a Company; a Corporation.
If the registrant is:
 - a. An individual, full name and address
 - b. A Partnership, the venture or partnership name, office address, name of each partner and address if individuals
 - c. An Estate, the name of the estate, address, name of representative and address
 - d. A Real Estate Investment Trust, name of the trust, address of the trust, name of trust manager with residence address
 - e. A Company, name of company or corporation, state, county and office address
 - f. A Corporation, name of the corporation as stated in its articles, state, county, or jurisdiction, address
3. Insert Names & Titles: individual, general partner, joint venture, etc.
Insert local addresses
4. What type of business or service are your performing
5. Assumed Names are filed for a period of 10 years.

Filed for Record in
GRAND COUNTY

On: Feb 25, 2004 at 11:21P

As a
Recording

Document Number: 00046558

Amount 11.00

Receipt Number - 23629

By
Sylvia Pelarsky

STATE OF TEXAS COUNTY OF GRAND
I hereby certify that this instrument was
filed on the date and time stamped herein by me
and was duly recorded in the index and page
of the public records of:
GRAND COUNTY
as stamped herein by me.

Feb 25, 2004

SHERRILL ABBEY ABBEY, CLERK
GRAND COUNTY

CLERK OF THE COURT

Marc Hamlin
300 East 26th Street, Suite 1200
Bryan, TX 77803

ATTORNEY FOR PLAINTIFF

SCOTT J. SCHERR
3850 CORPORATE CENTER DRIVE
BRYAN TX 77802

THE STATE OF TEXAS**CITATION**

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

To: Atlantic Casualty Insurance Company Through the Texas Commissioner of Insurance, Texas Dept of Insurance who may be served at 333 Guadalupe Street, Austin, Texas 78701 Defendant,
Greeting:

You are hereby commanded to appear by filing a written answer to the Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 272nd District Court of Brazos County, Texas at the Courthouse of said County in Bryan, Texas. Said Petition was filed on June 30, 2017 in the case, numbered 17-001725-CV-272 on the docket of said court, and styled,

Marvin Klintworth d/b/a Brazos Site Work

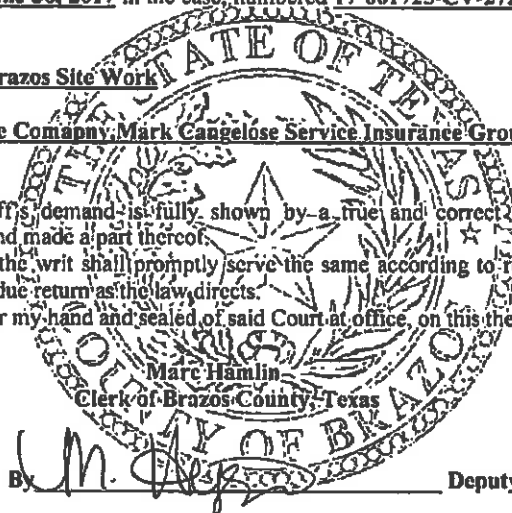
vs.

Atlantic Casualty Insurance Company, Mark Cangelose Service Insurance Group, Inc., and Litchfield Special Risks, Inc.

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Original Petition accompanying this citation and made a part thereof.

The officer executing the writ shall promptly serve the same according to requirements of the law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and sealed of said Court at office, on this the 14th day of July, 2017.



By [Signature] Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock _____ M.
Executed at _____, within the County of _____ at _____ o'clock _____ M. on the
_____ day of _____, 20____, by delivering to the within
named _____

_____ each, in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving this citation _____

Sheriff Account

To certify which witness my hand officially.

No. _____

For Clerk's Use

Taxed _____

Returned Record _____

Sheriff of _____ County, Texas

By _____ Deputy

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com™

POSTAGE USE

Postmark Here

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage \$

Atlantic Casualty Insurance Company
Through the Texas Commissioner of
Insurance Texas Dept of Insurance
333 Guadalupe Street
Austin, Texas 78701

97E9 2920 0000 095E 9702
97E9 2920 0000 095E 9702

CERTIFIED MAIL

OFFICE OF THE DISTRICT CLERK

Marc Hamlin
District Clerk
Grazas County
300 E. 26th Street, Suite 1200
Bryan, Texas 77803
Official Business

RETURN SERVICE REQUESTED

Atlantic Casualty Insurance Company
Through the Texas Commissioner of
Insurance Texas Dept of Insurance
333 Guadalupe Street
Austin, Texas 78701

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Atlantic Casualty Insurance Company Through the Texas Commissioner of Insurance Texas Dept of Insurance 333 Guadalupe Street 17-001725-CV-272 Austin, Texas 78701 CITY/STATE</p> <p>2. Article Number (Transfer from service label)</p> <p>7016 3560 0000 0282 6316</p>		<p>A. Signature</p> <p>X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)</p>		<p>Domestic Return Receipt</p>	

PS Form 3811, July 2015 PSN 7530-02-000-9053

CLERK OF THE COURT
 Marc Hamlin
 300 East 26th Street, Suite 1200
 Bryan, TX 77803

ATTORNEY FOR PLAINTIFF
 SCOTT J. SCHERR
 3850 CORPORATE CENTER DRIVE
 BRYAN TX 77802

THE STATE OF TEXAS

CITATION

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

To: Litchfield Special Risks, Inc. through Registered Agent Robert L Maes who may be served at 7016 Orizaba El Paso, TX 79912—or wherever he may be found Defendant,

Greeting: .

You are hereby commanded to appear by filing a written answer to the Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 272nd District Court of Brazos County, Texas at the Courthouse of said County in Bryan, Texas. Said Petition was filed on June 30, 2017 in the case, numbered 17-001725-CV-272 on the docket of said court, and styled,

Marvin Klintworth d/b/a Brazos SiteWork

vs.

Atlantic Casualty Insurance Company, Mark Cangelose Service Insurance Group, Inc., and Litchfield Special Risks, Inc.

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Original Petition accompanying this citation and made a part thereof.

The officer executing the writ shall promptly serve the same according to requirements of the law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and sealed of said Court at office, on this the 14th day of July, 2017.

Marc Hamlin
 Clerk of Brazos County, Texas

By [Signature] Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock _____ M.
 Executed at _____, within the County of _____ at _____ o'clock _____ M. on the _____ day of _____, 20____, by delivering to the within named _____

_____ each, in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving this citation _____

Sheriff Account

To certify which witness my hand officially.

No. _____

For Clerk's Use

Taxed _____


Returned Record _____

Sheriff of _____ County, Texas

By _____ Deputy

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY																	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Litchfield Special Risks, Inc. through Registered Agent Robert L Maes 7016 Orizaba El Paso, Texas 79912 17-001725-CV-272 CIT/Andh</p>		<p>A. Signature X</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
<p>2. Article Number (Transfer from service label) 7016 3560 0000 0282 6293</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table> <p>Domestic Return Receipt</p>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																		
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																		
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																		
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise																		
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™																		
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																		
<input type="checkbox"/> Insured Mail																			
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																			

CERTIFIED MAIL



7016 3560 0000 0282 6293
7016 3560 0000 0282 6293

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17-00 F729-0122L 003/21

Certified Mail Fee	
\$	
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	
\$	

**Litchfield Special Risks, Inc. through
Registered Agent Robert L Maes
7016 Orizaba El Paso, Texas 79912**

Postmark Here

For Instructions



Marc Hamlin
District Clerk
Brazos County
800 E. 26th Street, Suite 1200
Bryan, Texas 77803
Official Business
RETURN SERVICE REQUESTED

RETURN SERVICE REQUESTED

CLERK OF THE COURT
 Marc Hamlin
 300 East 26th Street, Suite 1200
 Bryan, TX 77803

ATTORNEY FOR PLAINTIFF
 SCOTT J. SCHERR
 3850 CORPORATE CENTER DRIVE
 BRYAN TX 77802

THE STATE OF TEXAS

CITATION

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

To: Service Insurance Group, Inc. through its registered Agent Rodney Hurt who may be served at 3840 Corporate Center Drive Bryan TX 77802 -or wherever he may be found Defendant,
 Greeting:

You are hereby commanded to appear by filing a written answer to the Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 272nd District Court of Brazos County, Texas at the Courthouse of said County in Bryan, Texas. Said Petition was filed on June 30, 2017 in the case, numbered 17-001725-CV-272 on the docket of said court, and styled,

Marvin Klintworth d/b/a Brazos Site Work

vs.

Atlantic Casualty Insurance Company, Mark Cangelose Service Insurance Group, Inc., and Litchfield Special Risks, Inc.

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Original Petition accompanying this citation and made a part thereof.

The officer executing the writ shall promptly serve the same according to requirements of the law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and sealed of said Court at office, on this the 14th day of July, 2017.

Marc Hamlin
 Clerk of Brazos County, Texas
 By [Signature] Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock _____ M.
 Executed at _____, within the County of _____ at _____ o'clock _____ M. on the
 _____ day of _____, 20____, by delivering to the within
 named _____

each, in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving this citation _____

Sheriff Account

To certify which witness my hand officially.

No. _____

For Clerk's Use

Taxed _____

Returned Record _____

Sheriff of _____ County, Texas
 By _____ Deputy

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature X</p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Service Insurance Group, Inc. through its Registered Agent Rodney Hurt 3840 Corporate Center Drive Bryan, Texas 77802 17-001725-CV-272 CIT/RH</p>		<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7016 3560 0000 0282 6309</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail® <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	

PS Form 3811, July 2015 PSN 7530-02-000-9055

Domestic Return Receipt

Service Insurance Group, Inc. through
its Registered Agent Rodney Hurt
3840 Corporate Center Drive
Bryan, Texas 77802

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

17-001725-CV-272 CIT/RH
Combined Mail Fee

Postmark Here

Service Insurance Group, Inc. through
its Registered Agent Rodney Hurt
3840 Corporate Center Drive
Bryan, Texas 77802

7016 3560 0000 0282 6309

7016 3560 0000 0282 6309

CERTIFIED MAIL

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT BOTTOM LINE.



Marc Hamlin
District Clerk
Brazos County
300 E. 26th Street, Suite 1200
Bryan, Texas 77803
Official Business

RETURN SERVICE REQUESTED

CLERK OF THE COURT
 Marc Hamlin
 300 East 26th Street, Suite 1200
 Bryan, TX 77803

ATTORNEY FOR PLAINTIFF
 SCOTT J. SCHERR
 3850 CORPORATE CENTER DRIVE
 BRYAN TX 77802

THE STATE OF TEXAS

CITATION

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10.00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

To: Mark Cangeloso who may be served at 2751 Nash Street, Suite 100 Bryan TX 77802—or wherever he may be found Defendant,

Greeting:

You are hereby commanded to appear by filing a written answer to the Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 272nd District Court of Brazos County, Texas at the Courthouse of said County in Bryan, Texas. Said Petition was filed on June 30, 2017 in the case, numbered 17-001725-CV-272 on the docket of said court, and styled,

Marvin Klintworth d/h/a Brazos Site Work

vs.

Atlantic Casualty Insurance Company, Mark Cangeloso Service Insurance Group, Inc., and Litchfield Special Risks, Inc.

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Original Petition accompanying this citation and made a part thereof.

The officer executing the writ shall promptly serve the same according to requirements of the law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and sealed of said Court at office, on this the 14th day of July, 2017.

Marc Hamlin
 Clerk of Brazos County, Texas

By [Signature] Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock _____ M.
 Executed at _____, within the County of _____ at _____ o'clock _____ M. on the _____ day of _____, 20____, by delivering to the within named _____

each, in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving this citation _____

Sheriff Account

To certify which witness my hand officially.

No. _____

For Clerk's Use

Taxed _____


Returned Record _____

Sheriff of _____ County, Texas

By _____ Deputy

BESTICKER AT TOP OF ENVELOPE TO THE FRONT
 OF THE RETURN ADDRESS FOR FAST DELIVERY MAIL

CERTIFIED MAIL®



7016
3560
0000
0282
6286

7016
3560
0000
0282
6286

Mark Cangelose
2751 Nash Street, Suite 100
Bryan, Texas 77802

Extra Services & Fees (insert box, and fee as appropriate)

<input type="checkbox"/> Return Receipt by First-Class®	\$ _____
<input type="checkbox"/> Return Receipt by Registered Mail™	\$ _____
<input type="checkbox"/> Certified Mail, Registered Delivery	\$ _____
<input type="checkbox"/> Add Signature Required	\$ _____
<input type="checkbox"/> Add Signature Restricted Delivery	\$ _____

Postage \$ _____

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Postmark

H08

For restrictions

Marc Hamlin
District Clerk
Brazos County
300 E. 26th Street, Suite 1200
Bryan, Texas 77803
Official Business
RETURN SERVICE REQUESTED



Mark Cangelose
2751 Nash Street, Suite 100
Bryan, Texas 77802

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p> <input checked="" type="checkbox"/> Complete items 1, 2, and 3. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. </p>		<p> A. Signature X </p>	
<p> 1. Article Addressed to: Mark Cangelose 2751 Nash Street, Suite 100 Bryan, Texas 77802 </p>		<p> B. Received by (Printed Name) </p>	<p> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee C. Date of Delivery </p>
<p> 2. Article Number (Transfer from service label) 7016 3560 0000 0282 6286 </p>		<p> D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No </p>	
<p> 3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail® <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) </p>		<p> <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p>	

17-001725-CV-272
CIT

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature x <i>Kylin Dorman</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Mark Cangelose 2751 Nash Street, Suite 100 Bryan, Texas 77802</p> <p>17-001725-CV-272 <i>CIT</i></p>		<p>B. Received by (Printed Name) <i>Kylin Dorman</i></p> <p>C. Date of Delivery <i>7-20-17</i></p>	
<p>2. Article Number (Transfer from service label)</p> <p>7016 3540 10000 0244 1424</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>9590 9402 2607 6336 0189 92</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery over \$500</p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	



TEXAS DEPARTMENT OF INSURANCE

General Counsel Division (113-2A)

333 Guadalupe, Austin, Texas 78701 ★ PO Box 149104, Austin, Texas 78714-9104
(512) 676-6585 | F: (512) 490-1064 | (800) 578-4677 | TDI.texas.gov | [@TexasTDI](https://twitter.com/TexasTDI)

Received & Filed 8/4/2017 7:59 AM
Marc Hamlin, District Clerk
Brazos County, Texas
Kristln Emert
Envelope# - 18635457

July 24, 2017

Scott J. Scherr
Payne, Malechek, Scheer, Campbell & Moore
3850 Corporate Center Drive
Bryan, Texas 77802

RE: Cause No.: 17-001725-CV-272; styled *Marvin Klintworth d/b/a Brazos Site Work vs. Atlantic Casualty Insurance Company, Mark Cangelose Service Insurance Group, Inc. and Litchfield Special Risks, Inc.*; in the 272nd Judicial District Court, Brazos County, Texas

Greetings:

On July 21, 2017, the enclosed documents were received in the office of the Commissioner of Insurance for service of process. The documents received are being returned to your office for the reasons indicated below.

Atlantic Casualty Insurance Company's mailing address must be noted on the citation. Please refer to the Texas Administrative Code, Title 28, Chapter 7, Rule §7.1414. Enclosed is a company profile.

Pursuant to §804.201(C) of the Texas Insurance Code, there is a fee of \$50.00, each time a request for service (including notice/demand/subpoena) is made on the Commissioner of Insurance.

Refer to Chapter 804 of the Texas Insurance Code for service of process information.

Please call me if you have questions.

Sincerely,

A handwritten signature in cursive script, reading "Tish Wilhelm", is written below the word "Sincerely,".

Tish Wilhelm
General Counsel
tish.wilhelm@tdi.texas.gov
(512) 676-6543

Enclosures

c: Brazos County District Clerk
E-filed

17-001725-CV-272
CIT

DO NOT WRITE IN THESE SPACES
RECEIVED AND FILED
At 9:59 o'clock A M

JUL 26 2017

MARC HAMLIN, DIST CLERK
By [Signature] Deputy
Tarrant County, Texas

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <u>[Signature]</u></p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to: Service Insurance Group, Inc. through its Registered Agent Rodney Hurt 3840 Corporate Center Drive Bryan, Texas 77802 17-001725-CV-272 CIT/RH</p>		<p>B. Received by (Printed Name) <u>KNIKIA FENVILLE</u></p> <p>C. Date of Delivery</p>	
<p>2. Article Number (Required for services listed below) 7016 3560 0000 0282 6304</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery</p>		<p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	

PS Form 3811, July 2015 PSN 7530-02-000-9033 Domestic Return Receipt

17-001725-CV-272
Cit

DC RECEIVED AND FILED
At 10 o'clock A M

JUL 31 2017

MARC HAMLIN, DIST CLERK
By [Signature] Deputy
Brewster County, Texas

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>PATRICIA HERERA</u> C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p>Litchfield Special Risks, Inc. through Registered Agent Robert L Maes 7016 Orizaba El Paso, Texas 79912 <u>17-001725-CV-272 CIT/mah</u></p>			
<p>2. Article Number (Transfer from service label)</p> <p><u>7006 3560 0000 0282 6293</u></p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><small>(Insured Mail Limited to \$500)</small></p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	

Received & Filed 8/2/2017 11:52 AM
 Marc Hamlin, District Clerk
 Brazos County, Texas
 Jeri Alexander
 Envelope# - 18587718

CAUSE NO. 17-001725-CV-272

MARVIN KLINTWORTH D/B/A	§	IN THE DISTRICT COURT
BRAZOS SITE WORK	§	
	§	
<i>Plaintiff</i>	§	
	§	
vs.	§	
	§	272ND JUDICIAL DISTRICT
ATLANTIC CASUALTY INSURANCE	§	
COMPANY; MARK CANGELOSE	§	
SERVICE INSURANCE GROUP, INC.;	§	
AND LITCHFIELD SPECIAL RISKS,	§	
INC.	§	
	§	
<i>Defendants</i>	§	BRAZOS COUNTY, TEXAS

**DEFENDANT LITCHFIELD SPECIAL RISKS, INC.'S
 ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant Litchfield Special Risks, Inc. ("Defendant") and files its Original Answer to Plaintiff's Original Petition. In support thereof, Defendant respectfully shows the Court the following:

I. GENERAL DENIAL

Pursuant to Texas Rule of Civil Procedure 92, Defendant generally denies each and every material allegation contained in Plaintiff's Original Petition and any amendments thereto, and demand strict proof thereof by a preponderance of the evidence.

II: AFFIRMATIVE DEFENSES

For further answer, if same be necessary, Defendant asserts that any award of pre-judgment interest cannot include, as a matter of law, future damages, if any, awarded to Plaintiff in this matter. Defendant further asserts that the amount of any pre-judgment and post-judgment interest awarded in this case against Defendant if any, is limited as set forth in common law, statute, state and federal constitutions, the Texas Finance Code, and/or the Texas Civil Practice and Remedies Code.

For further answer, if same be necessary, Defendant would show that the damages complained of by Plaintiff were caused by an independent, superseding cause over which Defendant had no control.

For further answer, if same be necessary, Defendant would also show that the damages about which Plaintiff complains are the result, in whole or in part, of the negligence of the plaintiff, and/or the negligence of other individuals and/or entities over whom Defendant had no control.

For further answer, if same be necessary, Defendant would further show that Plaintiff failed to mitigate its damages.

For further answer, if same be necessary, Defendant denies any alleged act or omission under the circumstances herein which may justify any claim for exemplary or punitive damages.

For further answer if same be necessary, Defendant asserts that Plaintiff's breach of contract claims are barred by the Plaintiff's prior breach, Plaintiff's failure to disclose

important information, lack of consideration, impossibility of performance, laches, unclean hands, waiver, estoppel, interference by third parties and the doctrine of accord and satisfaction.

For further answer if same be necessary, Defendant asserts that no contract existed between Plaintiff and Defendant.

For further answer if same be necessary, Plaintiff failed to comply with the terms and conditions of any policy that may have afforded coverage Plaintiff.

For further answer if same be necessary, Defendant claims all rights of contribution and indemnification.

For further answer if same be necessary, Defendant owes no duty to Plaintiff.

III: NOTICES

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendant hereby places the parties to this suit on notice of their intent to use all documents produced by the parties in response to written discovery in all pretrial proceedings and/or at trial of the above-entitled and numbered cause.

Pursuant to Rule 609(f) of the Texas Rules of Evidence, Defendant hereby places the parties to this suit on notice of their intent to use evidence of criminal convictions, if any, at trial of the above-entitled and numbered cause.

IV: JURY DEMAND

Defendant respectfully demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by his suit, that Defendant recover all costs, and for such other and further relief, both at law and in equity to which Defendant may be justly entitled.

Respectfully submitted,

By: Brian Bradigan
BRIAN J. BRADIGAN
State Bar No. 24099083
brian@hermes-law.com
RYAN BROWN
State Bar No. 24094567
ryan@hermes-law.com

HERMES LAW, P.C.

2001 N. Lamar Street, Suite 450
Oilwell Supply Building
Dallas, Texas 75202
(214) 749-6800
(214) 749-6801 (Fax)

**ATTORNEYS FOR DEFENDANT
LITCHFIELD SPECIAL RISKS, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that on the 2nd day of August, 2017, a true and correct copy of the foregoing document was forwarded via e-filing and/or facsimile to the following counsel of record:

Scott J. Scherr
Jason D. Reynal
PAYNE, MALECHEK, SCHERR,
CAMPBELL & MOORE, P.C.
3850 Corporate Center Dr.
Bryan, Texas 77802

Counsel for Plaintiff

Brian Bradigan
BRIAN J. BRADIGAN

CLERK OF THE COURT

Marc Hamlin
300 East 26th Street, Suite 1200
Bryan, TX 77803

ATTORNEY FOR PLAINTIFF

SCOTT J. SCHERR
3850 CORPORATE CENTER DRIVE
BRYAN TX 77802

THE STATE OF TEXAS**CITATION**

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

To: Atlantic Casualty Insurance Company-PO Drawer 8010, Goldsboro, NC 27533-8010 Through the Texas Commissioner of Insurance, Texas Dept of Insurance who may be served at 333 Guadalupe Street, Austin Texas 78701 Defendant,

Greeting:

You are hereby commanded to appear by filing a written answer to the PLAINTIFF'S ORIGINAL PETITION at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 272nd District Court of Brazos County, Texas at the Courthouse of said County in Bryan, Texas. Said Petition was filed on JUNE 30, 2017 in the case, numbered 17-001725-CV-272 on the docket of said court, and styled,

Marvin Klintworth d/b/a Brazos Site Work

vs.

Atlantic Casualty Insurance Company, Mark Cangelose Service Insurance Group, Inc., and Litchfield Special Risks, Inc.

The nature of Plaintiff's demand is fully shown by a true and correct copy of the PLAINTIFF'S ORIGINAL PETITION accompanying this citation and made a part thereof.

The officer executing the writ shall promptly serve the same according to requirements of the law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and sealed of said Court at office, on this the 9th day of August, 2017.

Marc Hamlin
Clerk of Brazos County, Texas

By [Signature] Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock ____M.
Executed at _____, within the County of _____ at _____ o'clock ____M. on the
_____ day of _____, 20____, by delivering to the within
named _____

_____ each, in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving this citation _____

Sheriff Account

To certify which witness my hand officially.

No. _____

For Clerk's Use

Taxed _____

Returned Record _____

Sheriff of _____ County, Texas

By _____ Deputy

BRAZOS COUNTY, TEXAS

common law, statute, state and federal constitutions, the Texas Finance Code, and/or the Texas Civil Practice and Remedies Code.

For further answer, if same be necessary, Defendant would show that the damages complained of by Plaintiff were caused by an independent, superseding cause over which Defendant had no control.

For further answer, if same be necessary, Defendant would also show that the damages about which Plaintiff complains are the result, in whole or in part, of the negligence of the plaintiff, and/or the negligence of other individuals and/or entities over whom Defendant had no control.

For further answer, if same be necessary, Defendant would further show that Plaintiff failed to mitigate its damages.

For further answer, if same be necessary, Defendant denies any alleged act or omission under the circumstances herein which may justify any claim for exemplary or punitive damages.

For further answer if same be necessary, Defendant asserts that Plaintiff's breach of contract claims are barred by the Plaintiff's prior breach, Plaintiff's failure to disclose important information, lack of consideration, impossibility of performance, laches, unclean hands, waiver, estoppel, interference by third parties and the doctrine of accord and satisfaction.

For further answer if same be necessary, Defendant asserts that no contract existed between Plaintiff and Defendant.

For further answer if same be necessary, Plaintiff failed to comply with the terms and conditions of any policy that may have afforded coverage Plaintiff.

For further answer if same be necessary, Defendant claims all rights of contribution and indemnification.

For further answer if same be necessary, Defendant owes no duty to Plaintiff.

For further answer if same be necessary, as to this answering Defendant, this action was not commenced within the time limited for the filing of such an action.

III: NOTICES

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendant hereby places the parties to this suit on notice of their intent to use all documents produced by the parties in response to written discovery in all pretrial proceedings and/or at trial of the above-entitled and numbered cause.

Pursuant to Rule 609(f) of the Texas Rules of Evidence, Defendant hereby places the parties to this suit on notice of their intent to use evidence of criminal convictions, if any, at trial of the above-entitled and numbered cause.

IV: JURY DEMAND

Defendant respectfully demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by his suit, that Defendant recover all costs, and for such other and further relief, both at law and in equity to which Defendant may be justly entitled.

Respectfully submitted,

By: Brian Bradigan

BRIAN J. BRADIGAN

State Bar No. 24099083

brian@hermes-law.com

RYAN BROWN

State Bar No. 24094567

ryan@hermes-law.com

HERMES LAW, P.C.

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Dallas, Texas 75202

(214) 749-6800

(214) 749-6801 (Fax)

**ATTORNEYS FOR DEFENDANT
LITCHFIELD SPECIAL RISKS, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that on the 9th day of August, 2017, a true and correct copy of the foregoing document was forwarded via e-filing and/or facsimile to the following counsel of record:

Scott J. Scherr
Jason D. Reynal
PAYNE, MALECHEK, SCHERR,
CAMPBELL & MOORE, P.C.
3850 Corporate Center Dr.
Bryan, Texas 77802

Counsel for Plaintiff

Brian Bradigan

BRIAN J. BRADIGAN

Received & Filed 8/14/2017 10:15 AM
Marc Hamlin, District Clerk
Brazos County, Texas
Kristin Emert
Envelope# - 18813253

CAUSE NO. 17-001725-CV-272

MARVIN KLINTWORTH D/B/A, BRAZOS SITE WORK	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
	§	
VS.	§	272ND JUDICIAL DISTRICT
	§	
ATLANTIC CASUALTY INSURANCE COMPANY, MARK CANGELOSE SERVICE INSURANCE GROUP, INC. AND LITCHFIELD SPECIAL RISKS, INC.	§	
	§	
DEFENDANTS.	§	BRAZOS COUNTY, TEXAS

**DEFENDANT SERVICE INSURANCE GROUP, INC.'S ANSWER AND PLEA TO THE
JURISDICTION TO PLAINTIFF'S ORIGINAL PETITION**

COMES NOW DEFENDANT SERVICE INSURANCE GROUP, INC. ("Defendant SIG, Inc.") filing its Answer and Plea to the Jurisdiction in response to Plaintiff's Original Petition.

I. GENERAL DENIAL

1. Defendant SIG, Inc. denies, generally and specifically, each and every, all and singular, the allegations in Plaintiff's Original Petition. Defendant SIG, Inc. requires Plaintiff to prove its causes of action by a preponderance of the evidence.

II. PLEA TO THE JURISDICTION

2. Defendant SIG, Inc. asks the Court to dismiss Plaintiff's suit because of lack of jurisdiction. The matter is not ripe and is pre-mature.

3. Moreover, the Court lacks jurisdiction because there is no justiciable issue against Defendant SIG, Inc. Most simply stated, SIG, Inc. bears no responsibility for business contracts managed by Defendant Mark Cangelose.¹

4. Defendant SIG, Inc. denies that it is liable in the capacity in which it is sued.

5. Defendant SIG, Inc. reserves the right to further amend and/or supplement this Answer at a future date, as is its right under the Texas Rules of Civil Procedure.

III. PRAYER

WHEREFORE, premises considered, Defendant SIG, Inc. prays that judgment be granted in its favor and against Plaintiff in all respects, such that Plaintiff take nothing, and that these causes of action against Service Insurance Group, Inc. be dismissed in total, with full prejudice, and at Plaintiff's cost.

Respectfully submitted,

THE MYERS LAW GROUP, L.L.P.

By: /s/ Angella H. Myers

Angella H. Myers

State Bar No. 24027229

amyers@myerslawllp.com

8144 Walnut Hill Lane, Suite 390

Dallas, Texas 75231

Telephone: (972) 781-2400

Facsimile: (972) 781-2401

**ATTORNEYS FOR DEFENDANT
Service Insurance Group, Inc.**

¹ Defendant Cangelose is an agent with SIG Insurance Services, LLC. (See Exhibit A attached.)

CERTIFICATE OF SERVICE

The undersigned certifies that Defendant SIG, Inc.'s Answer and Plea to the Jurisdiction were served to counsel for all parties by electronic filing and service on this 14th day of August, 2017.

/s/ Angella H. Myers
Angella H. Myers

8/14/2017

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SIG Insurance Services Corporate Headquarters Bryan

[Angie Beauchamp Estlund](#) Agent

979.703.4421 ext. 109

979.213.0703

[Mark Cangelose](#) Agent

979.731.8180

979.219.1762

[Calvin Daughtry](#) Agent

979.703.4421 ext. 103

[Ross Eller](#) Agent

979.703.4421 ext. 112

979.777.8690

[Cameron Hicks](#) Agent

979.703.4421 ext. 133

[Michael Miller](#) Agent

512.518.3243

512.626.4543

[Louie Malleme](#) Agent

512.323.8030

SIG Insurance Services Corporate Headquarters

2751 Nash Street

Suite 100

Bryan, TX 77802

Phone 979.703.4421

Fax 979.703.4426

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Exhibit A

Received & Filed 8/14/2017 4:04 PM
Marc Hamlin, District Clerk
Brazos County, Texas
Kristin Emert
Envelope# - 18830191

Cause No. 17-001725-CV-272

MARVIN KLINTWORTH D/B/A	§	IN THE DISTRICT COURT OF
BRAZOS SITE WORK,	§	
Plaintiff,	§	
	§	
v.	§	BRAZOS COUNTY, TEXAS
	§	
ATLANTIC CASUALTY INSURANCE	§	
COMPANY, MARK CANGELOSE,	§	
SERVICE INSURANCE GROUP, INC.,	§	
AND LITCHFIELD SPECIAL RISKS,	§	
INC.	§	
Defendants.	§	272ND JUDICIAL DISTRICT

DEFENDANT MARK CANGELOSE'S ORIGINAL ANSWER

COME NOW, Defendant Mark Cangelose ("Defendants") and files his Original Answer to Plaintiff's Original Petition and would respectfully show the Court as follows:

I.
GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every, all and singular, the allegations contained in Plaintiff's Original Petition and since they are allegations of fact, demands strict proof thereon by a preponderance of the credible evidence in accordance with the Constitution and laws of the State of Texas.

II.
PRAYER

WHEREFORE, Defendant Mark Cangelose prays that upon trial and hearing hereof, Plaintiff recovers nothing from him, that Defendant recovers all costs of court, and that Defendant be awarded his attorneys' fees and such other and further relief at law or in equity to which he may be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Thomas A. Culpepper

Thomas A. Culpepper
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Plaza of the Americas
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Telephone: (214) 871-8200
Facsimile: (214) 871-8209
Counsel For Defendant Mark Cangelose

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2017, a true and correct copy of the foregoing document was served via certified mail, return receipt requested, on the following:

Scott J. Scherr
Jason D. Reynal
Payne, Malechek, Scherr, Campbell & Moore, P.C.
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**Attorneys for Plaintiff Marvin
Klintworth d/b/a Brazos Site Work**

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**Attorneys For Defendant
Litchfield Special Risks, Inc.**

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amyers@myerslawllp.com
**Attorneys for Defendant
Service Insurance Group, Inc.**

/s/ Thomas A. Culpepper

Thomas A. Culpepper

ACIC App. 045

3. Atlantic Casualty submits that the underlying lawsuit for which Plaintiff seeks defense and indemnity involves an alleged claim falling outside the applicable policy period(s) for which there is no coverage.

4. By way of further answer, if such is necessary, Atlantic Casualty would show that there is no coverage for Plaintiff because the terms of the policy establish that he is not an insured. Atlantic Casualty issued policy L096000583-0, effective January 25, 2005 to January 25, 2006, to named insured Brian Klintworth d/b/a Brazos Site Work (classified as an "individual") (hereinafter, the Atlantic Casualty Policy). Brian Klintworth was also the applicant. The Atlantic Casualty Policy states:

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

** * **

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

CG 00 01 10 01 p. 9-10 of 16

5. By way of further answer, if such is necessary, Atlantic Casualty would show that there is no coverage under the Atlantic Casualty Policy for the defense or indemnity sought by Plaintiff in this action. In support thereof, Atlantic Casualty specifically alleges that the loss was due to a risk or cause coming within a particular exclusion or limitation. The Atlantic Casualty Policy contains the following business risk exclusions applicable to the underlying claim:

2. Exclusions

This insurance does not apply to:

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or*
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:*
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and*
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.*

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;*
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;*
- (3) Property loaned to you;*
- (4) Personal property in the care, custody or control of the insured;*
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or*
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.*

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises,

including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

6. By way of further answer, if such is necessary, Atlantic Casualty would show that there is no coverage under the Atlantic Casualty Policy for defense or indemnity sought by Plaintiff in this action. In support thereof, Atlantic Casualty specifically alleges that the loss was due to a risk or cause coming within a particular exclusion or limitation. The Atlantic Casualty Policy contains the following applicable or potentially applicable endorsements:

EXCLUSION—SUBSIDENCE

In consideration of the premium charged, it is hereby understood and agreed that liability for bodily injury or property damage caused by, resulting from, attributable to or contributed to, or aggravated by the subsidence of land as a result of landslide, mud flow, earth sinking or shifting, resulting from operations of the Named Insured or any other subcontractor of the Named Insured is excluded.

AGL-011 1/03

EXCLUSION—ASSAULT AND BATTERY

3. *Exclusion 2.a. of the Commercial General Liability Coverage Form is deleted in its entirety and replaced by the following:*

[This insurance does not apply to:]

(a) "bodily injury" or "property damage" expected or intended from the standpoint of any insured.

AGL-046 1/03

***EXCLUSION – INDEPENDENT
CONTRACTORS/SUBCONTRACTORS***

You or any insured are not covered for claims, loss, costs or expense arising out of the actions of independent contractors/subcontractors for or on behalf of any insured.

AGL-005 1/03

LIMITATION – DUTY TO DEFEND

Where there is no coverage under this policy, there is no duty to defend any insured.

AGL-056 1/03

7. By way of further answer, if such is necessary, Atlantic Casualty will show that pursuant to the coverage terms cited herein, Plaintiff was not entitled to defense or indemnity from Atlantic Casualty for the underlying lawsuit, and Atlantic Casualty did not breach the insurance contract as a matter of law.

**III.
FURTHER DENIALS**

8. In the alternative, and without waving the foregoing, Atlantic Casualty will show that the incident at issue and Plaintiff's alleged damages, if any, were caused in whole or in part, by the acts and/or omissions of Plaintiff and/or third parties beyond the control of Atlantic Casualty and for which Atlantic Casualty is not legally liable, and that such acts and/or omissions were an independent and intervening cause of the incident and/or the sole cause of the incident.

9. In the alternative, and without waiving the foregoing, Atlantic Casualty hereby claims its right to a credit, proportionate reduction, and/or offset for any settlement which might be reached between Plaintiff and any named or unnamed party, but reserves its right to elect to

take a credit for same or to submit the relative fault of same for contribution or credit purposes at an appropriate time.

10. In the alternative and without waiving the foregoing, Atlantic Casualty hereby asserts reliance upon all provisions of Chapter 33 of the Texas Civil Practice and Remedies Code.

11. Pursuant to Rule 193.7, Atlantic Casualty intends to use all documents produced by any party to this litigation at trial, arbitration, or any other hearing or proceeding.

12. In the alternative, and without waiving the foregoing, Atlantic Casualty affirmatively pleads that the calculation of post-judgment interest is governed by TEX. FIN. CODE §304.003(c).

IV. **CONCLUSION**

FOR THESE REASONS, Atlantic Casualty prays that Plaintiff takes nothing by way of this suit, that it be awarded its costs and attorneys' fees, and for such other and further relief, in law or equity, to which it may be entitled.

Respectfully submitted,

SAVRICK, SCHUMANN, JOHNSON,
MCGARR, KAMINSKI & SHIRLEY, L.L.P.

By: Camille Johnson
Camille Johnson, attorney-in-charge
State Bar No. 10686600
Allison Griswold
State Bar No. 24074320
6440 N. Central Expressway, Suite 107
Dallas, Texas 75206
Phone: (214) 368-1515
Fax: (214) 292-9647

Email: camille@ssjmlaw.com

Email: allison@ssjmlaw.com

**ATTORNEYS FOR ATLANTIC CASUALTY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record were served with the above-entitled pleading via electronic service on September 11, 2017, in accordance with the Texas Rules of Civil Procedure.

Scott J. Scherr
Jason D. Reynal
PAYNE, MALECHEK, SCHERR, CAMPBELL & MOORE, P.C.
3850 Corporate Center Drive
Bryan, Texas 77802
Counsel for Plaintiff Marvin Klintworth d/b/a Brazos Site Work

Brian J. Bradigan
Ryan Brown
HERMES LAW, P.C.
2001 N. Lamar Street, Suite 450
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Counsel For Defendant Litchfield Special Risks, Inc.

Thomas Culpepper
Dirrell S. Jones
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Dallas, Texas 75201
Counsel for Defendant Mark Cangelose

Angella H. Myers
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Counsel for Defendant Service Insurance Group, Inc.


Camille Johnson

Received & Filed 9/19/2017 3:14 PM
 Marc Hamlin, District Clerk
 Brazos County, Texas
 Makayla Higgins
 Envelope# - 19531385

Cause No. 17-001725-CV-272

MARVIN KLINTWORTH D/B/A	§	IN THE DISTRICT COURT OF
BRAZOS SITE WORK,	§	
Plaintiff,	§	
	§	
v.	§	BRAZOS COUNTY, TEXAS
	§	
ATLANTIC CASUALTY INSURANCE	§	
COMPANY, MARK CANGELOSE,	§	
SERVICE INSURANCE GROUP, INC.,	§	
AND LITCHFIELD SPECIAL RISKS,	§	
INC.	§	
Defendants.	§	272ND JUDICIAL DISTRICT

DEFENDANT'S FIRST AMENDED ANSWER AND AFFIRMATIVE DEFENSES

COME NOW, Defendant Mark Cangelose ("Defendant") and files his *First Amended Original Answer and Affirmative Defenses* and would respectfully show the Court as follows:

**I.
GENERAL DENIAL**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every, all and singular, the allegations contained in *Plaintiff's Original Petition* and since they are allegations of fact, demands strict proof thereon by a preponderance of the credible evidence in accordance with the Constitution and laws of the State of Texas.

**II.
AFFIRMATIVE DEFENSES**

Subject to and without waiving the foregoing, Defendant asserts the following Affirmative Defenses should same be necessary:

1. In the alternative, and without waiver of any other defense, Defendant asserts the affirmative defense of statute of limitations and/or statute of repose. Defendant would show that Plaintiff's claims are barred, in whole or in part, by any and all applicable statute(s) of limitations and/or statute(s) of repose.

2. In the alternative, and without waiver of any other defense, Defendant asserts that Plaintiff's claims are barred because of its own sole, comparative, contributory and/or proportionate responsibility.

3. In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff's claims are barred by the doctrine of instruction, consent, direction, ratification and/or agreement.

4. In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff's damages, if any, are unrelated to any act, error or omission of Defendant and Defendant's actions are not the proximate and/or producing cause of any alleged damages.

5. In the alternative, and without waiver of any other defense, Defendant pleads that some or all of Plaintiff's claims are barred by the Texas Civil Practice and Remedies Code §33.001 because Plaintiff's responsibility for the alleged damages, if any, is greater than 50 percent. Pursuant to Texas Civil Practice and Remedies Code §33.003, Defendant request the trier of fact determine as to each cause of action asserted the percentage of responsibility of each party to the action.

6. In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff is estopped from denying or disputing the parties, terms, provisions, conditions and coverage provided by the valid and fully executed insurance policies issued by Defendant Atlantic Casualty Insurance Company "Atlantic."

7. In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff is responsible for knowing, and is charged with full knowledge of all terms, conditions, exclusions and provisions of its insurance policy.

8. By way of an affirmative defense to Plaintiff's statutory and common law tort claims, Defendant pleads that Plaintiff failed to exercise the appropriate degree of care in obtaining the appropriate insurance coverage, and such failure constitutes negligence which was a proximate, producing, contributing, or sole proximate cause of the alleged damages, if any, Plaintiff alleges he suffered. Plaintiff's tort claims are barred in whole or in part, or should be reduced, due to the negligence and comparative responsibility of Plaintiff, as it was Plaintiff's own failure to use due and reasonable care to provide accurate information. Moreover, any alleged reliance by Plaintiff is also deemed unreasonable because of Plaintiff's comparative fault.

9. In the alternative, and without waiver of any other defense, Defendant pleads that the damages sought by this lawsuit against Defendant, were, in whole or in part, caused by the neglect and/or intentional and/or omissions of third person(s) over whom Defendant had no duty to exercise control or whom acted without permission or authority from Defendant. These third person(s)' actions and/or omissions were the sole proximate cause, sole producing cause, proximate cause or a cause of the injuries and damages alleged by Plaintiff.

10. In the alternative, and without waiver of any other defense, Defendant further affirmatively pleads that, after Plaintiff's representatives allegedly requested the policy provisions made the basis of this lawsuit and prior to the date of loss made the basis of this lawsuit, Plaintiff disclaimed any reliance on prior representations and Plaintiff waived its complaints regarding the coverage[s], alleged lack of coverage[s], and/or alleged representations by purchasing new policies and/or renewing its policy multiple times without further complaint or request for changes.

11. In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff's claims are barred by the defense of quasi-estoppel because Plaintiff accepted multiple renewal policies and an entirely new policy issued by Atlantic which did not provide property coverage for the arena after the date on which Plaintiff allegedly requested coverage for the arena.

12. In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff's claims for pre-judgment interest are subject to the dates and amounts set forth by statute, including but not limited to, Texas Financial Code, Chapter 304.

13. Defendants further affirmatively plead that in the unlikely event they are held liable in the above-referenced matter, the damages recoverable should be limited to the amounts and conditions set forth in Chapter 41.001, et. seq. of the Texas Civil Practices and Remedies Code, or its predecessor and/or subsequent or related provisions of the Texas Civil Practices and Remedies Code.

14. Defendants affirmatively plead that Plaintiff cannot recover attorney fees for the claims against Defendants under Chapter 38, Section 38.002, of the Texas Civil Practice & Remedies Code.

15. Subject to these defenses, Defendants demands strict proof by a preponderance of evidence.

III. PRAYER

WHEREFORE, Defendant Mark Cangelose prays that upon trial and hearing hereof, Plaintiff recovers nothing from him, that Defendant recovers all costs of court, and that Defendant be awarded their attorneys' fees and such other and further relief at law or in equity to which they may be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

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Counsel For Defendant Mark Cangelose

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2017, a true and correct copy of the foregoing document was served via certified mail, return receipt requested, on the following:

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/s/ Thomas A. Culpepper

Thomas A. Culpepper

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Brazos County, Texas
Makayla Higgins
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CAUSE NO. 17-001725-CV-272

MARVIN KLINTWORTH D/B/A, BRAZOS SITE WORK	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
	§	
VS.	§	272ND JUDICIAL DISTRICT
	§	
ATLANTIC CASUALTY INSURANCE COMPANY, MARK CANGELOSE SERVICE INSURANCE GROUP, INC. AND LITCHFIELD SPECIAL RISKS, INC.	§	
	§	
DEFENDANTS.	§	BRAZOS COUNTY, TEXAS

**DEFENDANT SERVICE INSURANCE GROUP, INC.'S FIRST AMENDED ANSWER,
PLEA TO THE JURISDICTION AND AFFIRMATIVE DEFENSES**

COMES NOW DEFENDANT SERVICE INSURANCE GROUP, INC. ("Defendant SIG, Inc.") filing its First Amended Answer, Plea to the Jurisdiction and Affirmative Defenses in response to Plaintiff's Original Petition.

I. GENERAL DENIAL

1. Defendant SIG, Inc. denies, generally and specifically, each and every, all and singular, the allegations in Plaintiff's Original Petition. Defendant SIG, Inc. requires Plaintiff to prove its causes of action by a preponderance of the evidence.

II. PLEA TO THE JURISDICTION

2. Defendant SIG, Inc. asks the Court to dismiss Plaintiff's suit because of lack of jurisdiction. The matter is not ripe and is pre-mature.

3. Moreover, the Court lacks jurisdiction because there is no justiciable issue against Defendant SIG, Inc. Most simply stated, SIG, Inc. bears no responsibility for business contracts managed by Defendant Mark Cangelose.¹

4. Defendant SIG, Inc. denies that it is liable in the capacity in which it is sued.

5. Defendant SIG, Inc. reserves the right to further amend and/or supplement this Answer at a future date, as is its right under the Texas Rules of Civil Procedure.

III. AFFIRMATIVE DEFENSES

Subject to and without waiving the foregoing, Defendant asserts the following Affirmative Defenses should same be necessary:

FIRST AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant asserts the affirmative defense of statute of limitations and/or statute of repose. Defendant would show that Plaintiff's claims are barred, in whole or in part, by any and all applicable statute(s) of limitations and/or statute(s) of repose.

SECOND AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant asserts that Plaintiff's claims are barred because of its own sole, comparative, contributory and/or proportionate responsibility.

THIRD AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff's claims are barred by the doctrine of instruction, consent, direction, ratification and/or agreement.

¹ Defendant Cangelose is an agent with SIG Insurance Services, LLC.

FOURTH AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff's damages, if any, are unrelated to any act, error or omission of Defendant and Defendant's actions are not the proximate and/or producing cause of any alleged damages.

FIFTH AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant pleads that some or all of Plaintiff's claims are barred by the Texas Civil Practice and Remedies Code §33.001 because Plaintiff's responsibility for the alleged damages, if any, is greater than 50 percent. Pursuant to Texas Civil Practice and Remedies Code §33.003, Defendant request the trier of fact determine as to each cause of action asserted the percentage of responsibility of each party to the action.

SIXTH AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff is estopped from denying or disputing the parties, terms, provisions, conditions and coverage provided by the valid and fully executed insurance policies issued by Defendant Atlantic Casualty Insurance Company "Atlantic."

SEVENTH AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff is responsible for knowing, and is charged with full knowledge of all terms, conditions, exclusions and provisions of its insurance policy.

EIGHTH AFFIRMATIVE DEFENSE

By way of an affirmative defense to Plaintiff's statutory and common law tort claims, Defendant pleads that Plaintiff failed to exercise the appropriate degree of care in obtaining the

appropriate insurance coverage, and such failure constitutes negligence which was a proximate, producing, contributing, or sole proximate cause of the alleged damages, if any, Plaintiff alleges he suffered. Plaintiff's tort claims are barred in whole or in part, or should be reduced, due to the negligence and comparative responsibility of Plaintiff, as it was Plaintiff's own failure to use due and reasonable care to provide accurate information. Moreover, any alleged reliance by Plaintiff is also deemed unreasonable because of Plaintiff's comparative fault.

NINTH AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant pleads that the damages sought by this lawsuit against Defendant, were, in whole or in part, caused by the neglect and/or intentional and/or omissions of third person(s) over whom Defendant had no duty to exercise control or whom acted without permission or authority from Defendant. These third person(s)' actions and/or omissions were the sole proximate cause, sole producing cause, proximate cause or a cause of the injuries and damages alleged by Plaintiff.

TENTH AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant further affirmatively pleads that, after Plaintiff's representatives allegedly requested the policy provisions made the basis of this lawsuit and prior to the date of loss made the basis of this lawsuit, Plaintiff disclaimed any reliance on prior representations and Plaintiff waived its complaints regarding the coverage[s], alleged lack of coverage[s], and/or alleged representations by purchasing new policies and/or renewing its policy multiple times without further complaint or request for changes.

ELEVENTH AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff's claims are barred by the defense of quasi-estoppel because Plaintiff accepted multiple renewal policies and an entirely new policy issued by Atlantic which did not provide property coverage for the arena after the date on which Plaintiff allegedly requested coverage for the arena.

TWELTH AFFIRMATIVE DEFENSE

In the alternative, and without waiver of any other defense, Defendant pleads that Plaintiff's claims for pre-judgment interest are subject to the dates and amounts set forth by statute, including but not limited to, Texas Financial Code, Chapter 304.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant further affirmatively plead that in the unlikely event it is held liable in the above-referenced matter, the damages recoverable should be limited to the amounts and conditions set forth in Chapter 41.001, et. seq. of the Texas Civil Practices and Remedies Code, or its predecessor and/or subsequent or related provisions of the Texas Civil Practices and Remedies Code.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant affirmatively pleads that Plaintiff cannot recover attorney fees for the claims against Defendants under Chapter 38, Section 38.002, of the Texas Civil Practice & Remedies Code.

Subject to these defenses, Defendant demands strict proof by a preponderance of evidence.

PRAYER

WHEREFORE, premises considered, Defendant SIG, Inc. prays that judgment be granted in its favor and against Plaintiff in all respects, such that Plaintiff take nothing, and that these causes of action against Service Insurance Group, Inc. be dismissed in total, with full prejudice, and at Plaintiff's cost.

Respectfully submitted,

THE MYERS LAW GROUP, L.L.P.

By: /s/ Angella H. Myers

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Telephone: (972) 781-2400
Facsimile: (972) 781-2401

ATTORNEYS FOR DEFENDANT
Service Insurance Group, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that Defendant SIG, Inc.'s First Amended Answer, Plea to the Jurisdiction and Affirmative Defenses were served to counsel for all parties by electronic filing and service on this 20th day of September, 2017.

/s/ Angella H. Myers
Angella H. Myers

CAUSE NO. 17-001725-CV-272

MARVIN KLINTWORTH D/B/A BRAZOS SITE WORK	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	BRAZOS COUNTY, TEXAS
	§	
ATLANTIC CASUALTY INSURANCE COMPANY, MARK CANGELOSE SERVICE INSURANCE GROUP, INC. AND LITCHFIELD SPECIAL RISKS, INC.	§ § § § §	272ND JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Marvin Klintworth d/b/a Brazos Site Work ("Brazos Site Work") files this First Amended Petition against Atlantic Casualty Insurance Company, Mark Cangelose, Service Insurance Group, Inc., Litchfield Special Risks, Inc, and SIG Insurance Services, LLC.

I.
DISCOVERY CONTROL PLAN LEVEL

Brazos Site Work intends that discovery be conducted under Discovery Level 3.

II.
PARTIES AND SERVICE

Plaintiff Marvin Klintworth d/b/a Brazos Site Work is an individual residing in Brazos County, Texas.

Defendant Atlantic Casualty Insurance Company is a surplus lines foreign insurance company with its principal place of business in North Carolina. Although Atlantic Casualty Insurance Company does not maintain an office in Texas, Atlantic Casualty Insurance Company engages in business in Texas, has provided insurance products in the State of Texas, and has purposefully availed itself to, and has sufficient contacts with, Texas to be subjected to personal jurisdiction in Texas. The claims presented herein arise directly from Atlantic Casualty Insurance

Company's contacts with the State of Texas. Pursuant to Tex. Ins. Code 804.001, et seq. and the policies at issue, Atlantic Casualty Insurance Company may be served with process by serving the Commissioner of Insurance in Texas, at Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The Commissioner of Insurance must then send by registered or certified mail, return receipt requested, one copy of the process served on the Commissioner to Atlantic Casualty Insurance Company at PO Drawer 8010, Goldsboro, North Carolina 27533-8010.

Defendant Mark Cangelose is an individual residing in Texas. He may be served with process at his regular place of business 2751 Nash Street, Suite 100, Bryan, Texas 77802.

Defendant Service Insurance Group, Inc. is a domestic corporation with its principal place of business in Brazos County, Texas. It may be served with process through its registered agent, Rodney Hurt, 3840 Corporate Center Drive, Bryan, Texas 77802.

Defendant Litchfield Special Risks, Inc. is a domestic corporation with its principal place of business in Texas. It may be served with process through its Registered Agent, Robert L Maes at 7016 Orizaba, El Paso, Texas 79912 or wherever he may be found.

Defendant SIG Insurance Services, LLC is a domestic limited-liability company with its principal place of business in Texas. It may be served with process through its Registered Agent, Melinda Pollard, at 2751 Nash Street, Suite 100, Bryan, Texas 77802 or wherever she may be found. CITATION IS REQUESTED AT THIS TIME.

III.

JURISDICTION AND VENUE

The subject matter in controversy is within the jurisdictional limits of this court.

This court has jurisdiction over the parties because Defendants are residents of Texas and/or are licensed to do business in Texas and/or engaged in sufficient contact and transactions

in Texas and/or participated in the stream of commerce with the expectation that it would affect commerce in Texas, and Defendants are thus subject to jurisdiction by Texas courts.

In accordance with Texas Rule of Civil Procedure 47, Plaintiff states that he is seeking non-monetary relief and monetary relief of more than \$100,000 but less than \$200,000. In the alternative, Plaintiff states that he is seeking monetary relief of more than \$200,000 but less than \$1,000,000. In the alternative, Plaintiff states that he is seeking monetary relief of more than \$1,000,000.

Venue in Brazos County is proper in this cause under Section 15.002, et. seq. of the Texas Civil Practice and Remedies Code because the discussions precipitating the purchase, and the actual purchase of, the insurance policies made the basis of this suit occurred in Brazos County, Texas, and at least two of the Defendants reside and/or maintain a principal office in Brazos County, Texas, and the place of the occurrences and contacts all occurred in Brazos County, Texas.

IV. **FACTS**

In or about December 2003, Brazos Site Work contacted Mark Cangelose, an insurance agent with Service Insurance Group, Inc, to obtain a liability insurance policy for its business operations. For the period of 2003-2012, Service Insurance Group, Inc. was part of the SIG Insurance Services, LLC group. In 2012, Mark Cangelose left Service Insurance Group, Inc. but continues to operate under SIG Insurance Services, LLC.

At the time Brazos Site Work contacted Mr. Cangelose in 2003, Brazos Site Work was a sole proprietorship owned by Marvin Klintworth, who was doing business under the assumed name of Brazos Site Work, as evidenced by the Assumed Name Certificate on file with the Brazos County Clerk at the time. A copy of the Assumed Name Certificate is attached hereto as Exhibit "A." Although the business was Marvin's, he shared the workload with his brother,

Brian, with Marvin doing more of the “out in the field” work and his brother Brian handling the office and paperwork end of the business.

Brazos Site Work provides construction sitework services, namely the part of a construction project that includes grading, excavation, driveways and foundation work. Thus, the construction services provided by Brazos Site Work specifically involve work with, on and involving the surface and levelness of the land. Knowing exactly what kind of work Brazos Site Work does and the business it is involved with, Mr. Cangolose submitted Commercial Insurance Applications on Plaintiff’s behalf to Litchfield Special Risks, Inc., the broker used by Mr. Cangelose and Service Insurance Group, Inc. to obtain policies. Litchfield Special Risks, Inc. obtained quotes from Atlantic Casualty Insurance Company on Plaintiff’s behalf. At Mr. Cangelose’s recommendation, Brazos Site Work purchased a policy from Defendant Atlantic Casualty Insurance Company. The policy number was L096000316 with a policy period of December 31, 2003 through December 31, 2004. A second policy through Atlantic Casualty Insurance Company, numbered L096000583, covered the period of January 25, 2005 through January 25, 2006. The terms of these policies provided for coverage of certain claims made against the insured and obligated Atlantic Casualty Insurance Company to provide a defense for claims made against the insured.

During the policy periods, Chappell Hill Construction Company (“Chappell Hill”) subcontracted with Brazos Site Work to perform work for a construction project in Red Rock, Texas (“the Project”). The Project was owned by Bluebonnet Electric Cooperative, Inc. (“Bluebonnet”).

In completing his initial bid, Brazos Site Work reviewed the plans and specifications to provide a bid to use 4-feet of select fill under the building pad. Brazos Site Work began and then completed work on the Project during the applicable policy period. A Certificate of Substantial

Completion was later issued for the Project on October 19, 2005, well within the applicable policy period. In doing work on the Project, Brazos Site Work used 4-feet of select fill, as it thought was appropriate by reading of the plans and specifications provided.

After completion of the work, Bluebonnet filed suit in Bastrop County against Chappell Hill and other parties in a case styled Cause Number 423-4305; *Bluebonnet Electric Cooperative, Inc. v. Chappell Hill Construction Co., et al*; In the 423rd Judicial District Court of Bastrop County, Texas. Bluebonnet alleged certain construction and design defects in this lawsuit which was filed in 2016. Bluebonnet alleged that the Red Rock facility had been damaged due to upward movement of the soil-supported slab and attributes that movement to the fact that only 4-feet of select fill was used instead of 6-feet. It was not until July 1, 2016 that Bluebonnet made Marvin Klintworth d/b/a Brazos Site Work a party to the suit, alleging that Brazos Site Work was negligent in reading and interpreting the plans and specifications. Bluebonnet contends that Brazos Site Work should have read the plans and specifications to require 6 feet of select fill for the slab on grade, instead of the 4 feet that Brazos Site Work thought was required.

Brazos Site Work complied with its contract and provided the amount of fill it bid, but Bluebonnet contends Brazos Site Work was negligent because it read the plans and specifications incorrectly. That lawsuit is not a breach of contract case against Brazos Site Work – it is a negligence case. In fact, Brazos Site Work did not even have a contract with Bluebonnet and therefore Bluebonnet cannot even assert a breach of contract case against Brazos Site Work.

Bluebonnet claims to have approximately \$2 million in damages. Bluebonnet asserts that because the dirt work performed by Brazos Site Work was buried beneath the building, it was impossible to see the damages at that time. Bluebonnet further claims it did not discover the source of the issues until 2014. Although Brazos Site Work disputes Bluebonnet's claims,

Bluebonnet made a claim which is, or should be, covered by the policies issued by Defendant. Accordingly, Brazos Site Work notified Defendant of the lawsuit by Bluebonnet and demanded that Defendant provide coverage and a defense as required by the policies. This notice was provided immediately after Brazos Site Work located the policy information.

Atlantic Casualty Insurance Company was made aware of the claim and given a copy of Bluebonnet's live-pleading. Brandi K. Percy, a Litigation Examiner with the insurance company was assigned to the claim. Acting on no more than the petition itself and a very short single phone conversation with counsel on March 21, 2017, the insurance company agent issued a ten-page letter, on behalf of Atlantic Casualty Insurance Company on March 31, 2017, denying coverage of the claims made by Bluebonnet and refusing to provide Brazos Site Work a defense.

In refusing to provide coverage, or even provide a defense for Brazos Site Work, Atlantic Casualty Insurance Company claims that the insurance policy is not applicable to the named Defendant in the Bluebonnet suit, "Marvin Klintworth dba Brazos Site Work." However, Brazos Site Work's policies with Atlantic Casualty Insurance Company names the insured as follows:

BRIAN KLINTWORTH
DBA **BRAZOS SITE WORK**
9349 DILLY SHAW TAP RD
BRYAN TX 77808

An Assumed Name Certificate, under Chapter 36, Title 4 of the Texas Business and Commerce Code was filed in February 2004 indicating that Brazos Site Work was the assumed name under which Marvin Klintworth was conducting business. At the time the insurance was obtained, the only person doing business as "Brazos Site Work" was Marvin Klintworth. The policies do provide coverage to "Brazos Site Work," and therefore, Brazos Site Work – the named defendant in the Bluebonnet lawsuit – is a named insured for which coverage should apply. Furthermore, during the single phone conversation between Defendant's agent and

counsel for Klintorth, it was explained that Marvin and Brian are brothers and had worked at Brazos Site Work together since its inception, and that Brian mainly handled the paperwork while Marvin was generally out in the field.

Brazos Site Work had a d/b/a certificate on file at the time the insurance was obtained. Such certificate put everyone on notice as to who was doing business as Brazos Site Work. The subcontract between Brazos Site Work and Chappell Hill lists “Brazos Site Work” as the subcontractor, and Brazos Site Work is the named insured on the face of the policies at issue. Any discrepancy about who was being insured was caused by the Defendants, who were on notice by Klintworth and by the d/b/a certificate, as to who Brazos Site Work really was.

Atlantic Casualty Insurance Company further denied coverage on the basis that the alleged damages occurred outside of the policy periods, without even conducting any investigation as to when the alleged damages actually occurred or began to occur. Even the Plaintiff in the Bluebonnet suit says they could not see the damage because it was under the building, so Atlantic Casualty cannot possibly know when the alleged damages occurred, much less that they occurred outside the policy period.

The policies at issue are “occurrence-based” and state that the insurance provides coverage when “[t]he “bodily injury” or “property damage” occurs during the policy period....” As explained to Atlantic Casualty’s agent, Bluebonnet’s lawsuit alleges that it seeks damages for Brazos Site Work’s alleged negligence in failing to construct the Project’s building pad in accordance with plans and specifications, and the only time in which Brazos Site Work performed work on the Project was during the policy periods. Bluebonnet alleges that its damages resulted from this failure. The “occurrence” and damages for which Bluebonnet sues Brazos Site Work occurred during the policy period, even if the damages were not discovered until much later.

Atlantic Casualty Insurance Company further listed a series of policy provisions, without any explanation for how these provisions applied to Brazos Site Work's request for coverage and how they supported Atlantic Casualty Insurance Company's decision to decline coverage. Curiously, one provision cited in Ms. Percy's letter does not even appear in either insurance policy she provided to the insured's counsel. That provision reads as follows:

EXCLUSION – SUBSIDENCE

In consideration of the premium charged, it is hereby understood and agreed that liability for bodily injury or property damage caused by, resulting from, attributable to or contributed to, or aggravated by the subsidence of land as a result of landslide, mud flow, earth sinking or shifting, resulting from operations of the Named Insured or any other subcontractor of the Named Insured is excluded.

AGL-011 1/03

If the "Subsidence" exclusion is considered to be part of Plaintiff's insurance policies, it stands to reason that Plaintiff was sold a virtually useless policy. By virtue of Plaintiff's business alone—Brazos *Site Work*—it is clear that the nature of Plaintiff's work is dirt work for new construction. Movement of foundations and subsidence, is a very common, known issue in the state of Texas. And Brazos Site Work's work is directly involved in the leveling and minimization of earth movement. Coverage for subsidence is something that Brazos Site Work would clearly have expected and needed in a liability policy. If the "Subsidence" exclusion is considered to be part of Brazos Site Work's insurance policies, then Defendants Service Insurance Group, Inc., Mark Cangelose, and Litchfield Special Risks, Inc. were negligent in selling the wrong policies to Plaintiff. Furthermore, Defendant Atlantic Casualty Insurance Company has misinterpreted its own policy provisions because the "Subsidence" exclusion is not applicable to the facts of this case.

If the "Subsidence" exclusion is not part of the Plaintiff's insurance policies, then Defendant Atlantic Casualty Insurance Company has boldly misrepresented the policies to

Brazos Site Work by claiming certain non-existent language has a bearing on its decision to deny coverage.

The duty to defend is a separate duty owed by the insurance company and even if Brazos Site Work is not liable to Bluebonnet for its alleged “negligence” in reading the plans and specifications, Atlantic Casualty Insurance Company still owed Brazos Site Work a duty to defend such ridiculous claims. Defendant Atlantic Casualty Insurance Company has wrongfully denied to even investigate or defend Brazos Site Work. Its actions towards Brazos Site Work reflect a complete lack of good faith in investigation of Bluebonnet’s allegations prior to declining to even provide Brazos Site Work with a defense in the Bastrop County lawsuit. Brazos Site Work seeks a determination by this Court that Atlantic Casualty Insurance Company is contractually obligated to provide a defense and coverage to Brazos Site Work for the claims asserted by Bluebonnet. As it stands now, Brazos Site Work is having to pay for its own defense, is potentially liable for \$2 million in damages, and the insurance procured for the express purpose of providing coverage for this construction project, appears to be a farce. Even if Brazos Site Work were to prevail in the Bastrop County action, it has expended, and will continue to expend, significant amounts of attorney’s fees in defending the action—fees that should have been covered by Atlantic Casualty Insurance Company under its obligation to provide a defense to Brazos Site Work.

Furthermore, in May 2010, Plaintiff reorganized into two separate entities—Brazos Sitework, LP and Brazos Sitework Management, LLC. At the time, neither Mark Cangelose, Service Insurance Group., Inc. nor SIG Insurance Services, LLC recommended and/or advised Brazos Site Work to purchase a policy that would provide continuing coverage for work performed by Brazos Site Work, the sole proprietorship.

V.
DECLARATORY JUDGMENT

Pursuant to §37.006 of the Texas Practice & Remedies Code, the other persons or entities that would be affected by the declarations sought herein include Marvin Klintworth d/b/a Brazos Site Work and Defendant Atlantic Casualty Insurance Company and Mark Cangelose, Service Insurance Group, Inc., and SIG Insurance Services, LLC. Brazos Site Work requests that the Court interpret the rights and obligations of the parties with regard to the Atlantic Casualty Insurance Company Policies, Numbered L096000316 and L096000583, and determine the following:

- That the claims made by Bluebonnet Electric Cooperative, Inc. are claims covered under the insurance policies issued by Atlantic Casualty Insurance Company and made the basis of this suit; and
- That Atlantic Casualty Insurance Company must provide a defense for Brazos Site Work with regard to the claims made by Bluebonnet Electric Cooperative, Inc.

VI.
BREACH OF CONTRACT

Defendant Atlantic Casualty Insurance Company promised to provide a defense to Brazos Site Work should a suit arise against Brazos Site Work for damages covered by the policies. Brazos Site Work paid premiums in compliance with the policies. However, upon being notified of the lawsuit filed by Bluebonnet, Defendant Atlantic Casualty Insurance Company refused to provide a defense. This refusal constitutes a breach of contract, and Brazos Site Work has suffered injuries and damages as result of that breach.

VII.
NEGLIGENCE

Pleading in the alternative, Defendants Mark Cangelose, Service Insurance Group, Inc., and Litchfield Special Risks, Inc.'s conduct constituted a breach of the duty of ordinary care owed by Mark Cangelose, Service Insurance Group, Inc., and Litchfield Special Risks, Inc. to Brazos Site Work, and Mark Cangelose, Service Insurance Group, Inc., SIG Insurance Services, LLC, and Litchfield Special Risks, Inc. were negligent by failing to properly identify the name of the insured in the applicable policies and, if the "Subsidence" exclusion is considered part of the applicable policies, Mark Cangelose, Service Insurance Group, Inc., SIG Insurance Services, LLC, and Litchfield Special Risks, Inc. were negligent by failing to offer Plaintiff a policy that did not include a "Subsidence" exclusion or by failing to fully and completely explain such coverage issues. Furthermore, Mark Cangelose, Service Insurance Group, Inc., and/or SIG Insurance Services, LLC were negligent by failing to recommend and/or advise Plaintiff to purchase a policy that would provide continuing coverage for work performed by Marvin Klintworth d/b/a Brazos Site Work.

The above listed act and/or omission rises to the level of negligence and was a proximate cause of Brazos Site Work's damages made the basis of this lawsuit.

VIII. ATTORNEYS FEES

As a result of the controversy between the parties, Brazos Site Work has been required to retain the undersigned legal counsel to institute and prosecute this action. Brazos Site Work is therefore entitled, pursuant to Section 37.009 and §38.001 of the Texas Civil Practice and Remedies Code and Texas common law, to all reasonable and necessary attorney's fees and costs in prosecuting this action.

IX.
CONDITIONS PRECEDENT

All conditions precedent have been performed or have been waived as required by Rule 54 of the Texas Rules of Civil Procedure.

X.
REQUEST FOR DISCLOSURE

Brazos Site Work requests that within fifty (50) days of service, Defendants provide the information set forth in Rule 194.2 of the Texas Rules of Civil Procedure.

XI.
RULE 193.7 NOTICE

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Brazos Site Work serves notice that at any pretrial hearings or at the trial of this lawsuit, Brazos Site Work intends to use and rely upon each document produced by any party in written discovery, pretrial hearings, depositions, or in conjunction with the filing of any motions or pleadings in this lawsuit.

XII.
JURY DEMAND

Brazos Site Works respectfully demand a trial by jury on all issues of fact that may exist.

XIII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that on final trial hereof, declaratory judgment be granted as requested herein; that Plaintiff have and recover all costs and reasonable attorney's fees, and for such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

PAYNE, MALECHEK, SCHERR, CAMPBELL & MOORE, P.C.

By /s/ Scott J. Scherr

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Email: Scherr@thepaynelawgroup.com

Jason D. Reynal

State Bar No. 24083725

Email: Reynal@thepaynelawgroup.com

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Bryan, Texas 77802

979.776.9800

979.731.8333 (Fax)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to the following in the above entitled and numbered cause on September 20, 2017:

Thomas A. Culpepper
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Counsel for Atlantic Casualty Insurance Company

Via E-File to camille@ssjmlaw.com
Via E-File to allison@ssjmlaw.com

/s/ Scott Scherr

Scott J. Scherr

Brazos County



Marc Hamlin
District Clerk

500 E. 26th St., Suite
Bryan TX 77803
(979) 361-4230-4240

ISSUANCE OF PROCESS INSTRUCTIONS

Cause Number: 17-001725-CV-272

Please issue the following type of process:

- ☒ Citation ☐ Citation by Publication ☐ Citation by Posting
☐ Writ of Sequestration ☐ Writ of Garnishment ☐ Writ of Attachment
☐ Subpoena-Civil ☐ Subpoena-Criminal ☐ Bill of Cost

Requesting Party's Name, Address and Phone Number:

Scott Scherr-Payne, Malechek, Scherr, Campbell & Moore, PC

3850 Corporate Center Drive

Bryan, Texas 77802

Name and Address of person to be served:

SIG Insurance Services, LLC through its Registered Agent Melinda Pollard

2751 Nash Street, Suite 100

Bryan, Texas 77802—or wherever she may be found

Please check one:

- ☐ Attorney/Runner will pick up (Put in Runners Box)
☐ Process Server will pick up (Put in Runners Box)
☐ Mail to Attorney's Office/Requesting Party
☐ Forward to Sheriff's Office
☒ Serve by Certified Mail

The Brazos County District Clerk's Office cannot issue any process until the above information is provided and the correct fees have been paid.

List of Counsel of Record and Parties Represented

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